

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**TRAVIS S. SWEIGART**

**Plaintiff,**

**Civil Action No.: 5:21-cv-00922**

**v.**

**VOYAGER TRUCKING CORP., KEVIN  
J. PATTEN, BLUE & GREEN  
TRUCKING & HAIR, LLC, and KEVIN  
J. PATTEN d/b/a BLUE & GREEN  
TRUCKING & HAIR, LLC,**

**Defendants.**

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**DEFENDANTS' PRETRIAL MEMORANDUM**

**I. BRIEF SUMMARY AND NATURE OF THE CASE**

On September 9, 2019, Plaintiff Travis Sweigart was riding his 2002 Yamaha Fazer motorcycle on PA Route 10 through Morgantown, PA and speeding in order to get to work on-time.

At the same time, Defendant Kevin J. Patten was driving his company's 2006 Freightliner tractor with trailer attached loaded with municipal waste. Mr. Patten's company, Defendant Blue & Green Trucking & Hair, LLC had been hired as an independent contractor by Voyager Trucking to carry the municipal waste to the Conestoga Landfill, less than a mile away. Mr. Patten was not running late or speeding. Mr. Patten was exiting from US 176 and planed to travel across Rte. 10 and head left from this exit.

Both Plaintiff and Mr. Patten were familiar with this area. Indeed, Plaintiff testified that he had operated vehicles on this stretch of road thousands of times.

Visibility is not at issue. Mr. Patten stopped for at least three seconds at the Rte. 10 road edge and could see, and could be seen by, approaching traffic on Route 10, including Plaintiff. Mr. Patten saw a motorcycle's headlight at a bridge about 3 football fields away.

Mr. Patten had almost completed his turn when the accident happened. In fact, his tractor was already in the left lane; his trailer had almost cleared the right lane when Plaintiff first applied any braking, locked his rear-tire and slid into the fourth axle tire at the trailer's rear.

The evidence shows that Plaintiff sped toward Mr. Patten's moving tractor-trailer and watched 65' of the 70' tractor trailer move in front of him for 11.6 seconds before he struck it. Mr. Patten's tractor trailer was present at the road edge and visible for at least 3 seconds before initiating that 11.6 second turn – this means Mr. Patten and his vehicles were visible and present for more than 15 seconds before impact and before Plaintiff crossed under the bridge to approach the intersection.

Plaintiff caused this accident by losing control and striking the side of a vehicle that he had been looking at for 15 or so seconds while speeding toward it under alleged control of the motorcycle's forward movement, speed, acceleration, deceleration, and braking. Had Plaintiff been honoring the posted speed limit, Mr. Patten's trailer would have cleared the lane before Plaintiff drove into it. Of course, Mr. Sweigart could also have approached the intersection with caution, maintained an assured clear distance, slowed down, or moved from the left side of the lane to the right side of the lane to go around the rear of the trailer and avoid the collision. 99.9% of drivers respond better than Plaintiff did in this accident. Likewise, studies demonstrate that every driver in Mr. Patten's shoes would have similarly initiated that left turn.

## **II. JURISDICTION**

Diversity jurisdiction pursuant to 28 U.S.C. §1332.

## **III. LEGAL ISSUES**

### **A. Plaintiff Caused This Accident**

Plaintiff has an obligation to follow the laws of the road and not run into other vehicles he encounters on the roadway. Plaintiff breached these obligations by failing to:

1. obey the posted speed limit;
2. approach an intersection with caution especially when he knew that vehicles crossed or entered Route 10 from the I-176 off-ramp;
3. keep an assured clear distance ahead;
4. exercise reasonable care while operating his motorcycle in hours of darkness; and
5. slow or stop his motorcycle before colliding into the end of Mr. Patten's trailer.

These breaches are clear evidence of Plaintiff's unsafe, illegal, and reckless conduct and a demonstration of Plaintiff's poor judgment. This is what caused the accident.

In fact, failure to obey the posted speed limit alone constitutes negligence *per se* and is a forfeiture of any right of way. See, e.g., Enfield v. Stout, 161 A.2d 22 (Pa. 1960). Defendants request an *opening* instruction to the jury advising that Plaintiff was negligent *per se*.

Mr. Patten's tractor trailer is approximately 70 feet long. Plaintiff did not strike the tractor. If he did, this would indicate an emergency situation that required an immediate response – it would also indicate the possibility that the tractor pulled out in front of his path of travel. Plaintiff did not strike the front or even the middle of the trailer either. Instead, Plaintiff watched the tractor trailer actively cross his lane of travel for 11.6 before striking the rear tandem wheels of the trailer which are positioned in the last 5 feet of the trailer. The tractor trailer was present and visible to Plaintiff for at least 15 seconds – 3 of which it was stopped at the road edge. It was Plaintiff's excess speed, inattentiveness, and disregard for fundamental motorcycle operation requirements that were the sole cause of this accident.

#### 1. Plaintiff Was Speeding

There is no dispute that Plaintiff was travelling in excess of the posted speed limit for Route 10 in violation of 75 Pa.C.S § 3362. Plaintiff's own accident reconstruction experts have Plaintiff travelling over the speed limit at incipient braking right before the locked rear tire skid mark left by Plaintiff's motorcycle when he lost control. Defendants' accident reconstruction experts agree that Plaintiff was speeding as he approached the intersection and was conservatively going 15 mph over the speed limit as he approached the bridge almost 800 feet

away. Plaintiff testified that he let off the throttle and applied the front brake – this was before incipient braking. If true, Plaintiff was going even faster. Had Plaintiff been going the speed limit, Mr. Patten’s left turn would have been completed and the collision avoided.

2. Plaintiff Violated the Assured Clear Distance Rule and Fundamental Motorcycle Rider Obligations

Ignoring that Plaintiff obeying the speed limit alone would have avoided this crash, Plaintiff also violated his duty to maintain an assured clear distance ahead. See, 75 Pa.C.S.A. § 3361<sup>1</sup>. The assured clear distance rule requires motorists to travel at a speed that would permit them to stop within the bloom of their headlights and honoring conditions that then and there exist, like hours of darkness, approaching intersections, “or other traffic”. Plaintiff testified that he knew this but was not sure how far his headlight illuminated in front of him. Intersections and hours of darkness require heightened vigilance, caution, and reduced speed.

Plaintiff failed to honor the instructions and advice provided in the Pennsylvania motorcycle manual (“MC Manual”). The MC Manual advises motorcycle drivers to “SEE” – “Search, Evaluate, and Execute” meaning “search aggressively ahead to avoid potential hazards even before they arise. How aggressively you search, and how much time and space you have, can eliminate or reduce harm. Focus even more on finding potential escape routes in and around intersections....”. Riders are instructed to search for left turning vehicles. The MC Manual instructs riders to “leave enough time to react if an emergency arises”. Riders must be able to

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**§ 3361. Driving vehicle at safe speed.**

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

adjust their speed, communicate their presence, and adjust their position and direction in high-risk areas, including intersections. Intersections are characterized as representing “the greatest potential for conflict between you [a rider] and other traffic”. The MC Manual instructs riders to reduce speed and increase distance when approaching intersections and driving in hours of darkness. This advice echo’s Pennsylvania’s assured clear distance rule.

Ultimately, Plaintiff had an affirmative duty to maintain a safe space and distance and not run into the side of a trailer that was present and visible in his path for more than 15 seconds.

### 3. Plaintiff’s Response to Mr. Patten’s Tractor Trailer Was Worse Than 99.9% of Similarly Situated Individuals

This delayed response requires explanation. Defendants’ experts opine that Plaintiff delayed response to Mr. Patten’s present and visible tractor trailer was a combination of speed, inattentiveness, and inability to control the motorcycle. Frankly, the more skilled Plaintiff is in operating a motorcycle<sup>2</sup>, means that he was driving faster or was more inattentive. New data from Motive about the location, speed, bearing and position of Mr. Patten’s tractor indicates that Mr. Patten was visible to Plaintiff earlier, was moving slower, and present longer during the Plaintiff’s approach. The new data demonstrates Plaintiff’s response to be even slower than previously described.

Defendants submit that Plaintiff’s skill level was placed into dispute and at issue by Plaintiff himself. Plaintiff has his own explanation for this delayed response. Plaintiff proffers a human factors expert that excuses his conduct by primarily relying upon Plaintiff’s own previous personal experiences on his motorcycle and at this accident scene. Plaintiff even proffers a motorcycle riding and mechanics expert (Mr. Randy Nelson) who blesses Plaintiff’s actions in

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<sup>2</sup> The motorcycle also has to be in a condition capable of responding to Plaintiff’s skill level. If Plaintiff was counter-steering and applying the brakes appropriately and the motorcycle was responding, there would have to be some other explanation for why Plaintiff struck the trailer and/or could not stop.

this accident event. Mr. Nelson opines that Plaintiff is an experienced rider and driver and that his braking and bike handling were appropriate<sup>3</sup>. Plaintiff's experts opine that Plaintiff's hazard assessment and perception was reasonable for a motorcyclist, especially one like the Plaintiff with his own experiences riding a motorcycle generally and at this specific accident roadway.

Indeed, since filing and arguing of motions *in limine*, Plaintiff produced a demonstrative video and photographs from his motorcycle expert purportedly to demonstrate that a motorcycle could create a hook at the end of a tire mark with a rear-locked tire. This alone opens the door to evaluate whether Plaintiff or his motorcycle were capable of doing that – condition, licensing and competence.

Plaintiff did not have a motorcycle license and his motorcycle had not passed any required safety inspection. Licensing demonstrates basic proficiency and an individual's "ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or class of vehicles for which the applicant desires a license to drive". 75 Pa.C.S. § 1508(a). See also, 75 Pa.C.S. §§ 1501, 1504, 4701, et seq.

Another explanation for Plaintiff's delayed response is impairment due to the influence of marijuana. It is undisputed that Plaintiff had marijuana metabolites in his system at the time of the collision in violation of 75 Pa.C.S. § 3802(d)(1)(i) and (iii). See also, Commonwealth v. Etchison, 916 A.2d 1169, aff'd in 2008 Pa. LEXIS 263 (Pa. 2008)(demonstration of impairment is not the question but rather if any amount of controlled substance was in his blood); Crosby v. Commonwealth Department of Transportation, et al, 548 A.2d 281 (Pa. Super. 1988)(requiring a

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<sup>3</sup> Swerving and stopping are two avoidance skills discussed in the MC Manual. Either of these skills would have avoided the September 9, 2019 accident. The MC Manual states that sometimes stopping is not possible and a rider should be ready and able to swerve around an object. In this accident, Plaintiff operated his motorcycle in the far left side of the lane. He ignored the space to the right that would have provided an escape route around the rear of the trailer. The rules of the road in Pennsylvania require operating a vehicle on the right side of a roadway when practical. See, 75 Pa.C.S. § 3301.

showing of some type of corroborative evidence that is suggestive of impairment in addition to toxicology results).

Here, Plaintiff was familiar with the road where the accident happened and knows that tractor trailers exit off the ramp from I-176 to enter onto Route 10. Plaintiff purports to be a skilled and knowledgeable motorcycle driver. He has experienced vehicles cross his path that he did not anticipate and was able to avoid hitting them. In fact, Plaintiff's expert, Randy Nelson characterizes the videos that Plaintiff took of himself operating his motorcycle as evidence of his skill level. Plaintiff was so comfortable with operating his motorcycle that he was able to perform tricks such as wheelies. It is also undisputed that at the time of the accident, Plaintiff had marijuana and a marijuana pipe in his possession. The parties also agree that marijuana use could result in a slowed reaction time. Both parties have toxicology experts in this case.

Defendants submit that the toxicology report should be admitted into evidence given the corroborative evidence of impairment. In fact, the courts have submitted toxicology reports to a jury with less corroborative evidence than provided here. See, e.g., Donaldson v. Arsenich, 2011 Phila. Ct. Com. Pl. LEXIS 62, (aff'd on appeal without opinion in 2011 Pa. Super. LEXIS 4831 (Pa. Super. 2011) and Crosby v. Commonwealth Department of Transportation et al., 548 A.2d 281 (Pa. Super. 1988). This evidence is not unfairly prejudicial or likely to cloud the impartial scrutiny and evaluation of the facts by the jury. Defendants anticipate that Plaintiff will offer evidence that he was not impaired and both sides should be presented to the jury so that they can weigh the credibility of the evidence. This is the duty of the jury.

Defendants intend to submit memorandums to this Court on the preliminary preclusion and/or limitation of, e.g., the toxicology report, evidence of Plaintiff's marijuana usage and possession, lack of motorcycle license and safety inspection, Plaintiff's motorcycle videos and photographs and seek reconsideration of the same in light of the new Motive data, increase in



delayed response by Plaintiff to the tractor-trailer, and the inclusion of Plaintiff's skill level by his motorcycle operations expert, Randy Nelson.

**B. Mr. Patten Was Not Negligent**

Plaintiff must establish that Mr. Patten owed a duty to Plaintiff, breached that duty, and as a result, Plaintiff suffered damages. See, Winiski v. Brown & Brown Insurance Co., 906 A.2d 571, 575-576 (citing Phillips v. Cricket Lighters, 841 A.2d 1000, 1008 (Pa. 2003), reversed on other grounds). Negligence is the absence of ordinary care that a reasonably prudent person would have exercised in the same circumstance. Martin v. Evans, 711 A.2d 458, 502 (Pa. 1998). There is no higher standard of care applied to commercial drivers and Plaintiff will not be permitted to offer argument or testimony to the contrary.

1. Mr. Patten Had the Right of Way and Occupied the Intersection When Plaintiff Ran Into Him

The Motive vehicle location data demonstrates that Mr. Patten stopped for at least 3 seconds at the road edge prior to initiating his left turn<sup>4</sup>. He then initiated his turn in advance of an approaching motorcyclist over 930 feet away – almost three football fields – and by the bridge.

Defendants' expert, Dr. Jeffrey Muttart compared the actions of Plaintiff and Mr. Patten in this case – initiating the left turn was what a reasonably prudent truck driver would have done in Mr. Patten's shoes. In fact, Dr. Muttart found that 9 out of 10 tractor-trailer drivers would have pulled out and initiated that left turn with a vehicle down by the bridge. Plaintiff suggests that Mr. Patten should have waited ten seconds – really it would have been more – but there would be no legal or factual reason to wait for a vehicle by the bridge and over 15 seconds away.

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<sup>4</sup> Plaintiff may assert that Mr. Patten violated Pennsylvania's left turn statute (75 Pa.C.S.A. §3322), however, the statute does not apply to the facts of this accident. 75 Pa.C.S.A. § 3322 prohibits a vehicle from making a left turn in front of a vehicle approaching from the opposition direction. For much of the accident event, Plaintiff was not approaching from the opposition direction but rather from the side of or perpendicular to Mr. Patten's tractor-trailer.



The Pennsylvania rules of the road require a turning vehicle to yield to other vehicles that are close enough to constitute a hazard. At 900 feet away, Plaintiff did not constitute a hazard. Further, Mr. Patten occupied the lane for at least 8 seconds before Plaintiff did anything. Hindsight is not an appropriate measure to evaluate breach of a duty. Flanagan v. Peoples Passenger Railway Co., 163 Pa. 102, 29 A. 743 (1984).

Also, Mr. Patten would not be able to appreciate the speed of an approaching vehicle by the bridge but has a reasonable expectation that the operator is obeying the speed limit. Mr. Patten was familiar with the intersection and that very left turn. He knew that he could complete his left turn if the approaching vehicle was by the bridge and he could have – but for Plaintiff’s speeding. The MC Manual advised Plaintiff that it was difficult for vehicles to see and gauge motorcycle drives. Plaintiff should have anticipated a tractor trailer over 900 feet away would not be able to tell that he was going faster than the posted speed limit.

## 2. Mr. Patten Was Not Distracted

The Federal Motor Carrier Safety Administration (“FMCSA”) permits the use of handsfree cell phone use when operating a tractor trailer. See, 49 CFR § 392.82. This distinction between hands-held and hands-free cell phone use is generally true regardless of what type of vehicle a person is operating. Ultimately, hands-held cell phone use and/or manually operating a cell phone while driving is prohibited. This was not the case here. Instead, Plaintiff contends that despite the cell phone call being hands free, Mr. Patten was distracted at the time of the accident but the call from his cousin Mr. Hamilton.

To support this contention, Plaintiff offers Dr. David Strayer as a distraction expert in this case<sup>5</sup>. Specifically, that Mr. Patten experienced impaired judgment due to cell phone

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<sup>5</sup> Defendants filed a motion to limit and/or preclude Dr. Strayer’s testimony pursuant to Fed.R.Evid. 702 and 703 that is still pending. See also, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 US 579 (1993). Defendants assert that Dr. Strayer’s opinions are speculative and lack foundation, and therefore, cannot pass Daubert’s muster. See

distraction. It's unclear how initiating a left turn when there is almost more than three football Ultimately, even Dr. Strayer concedes that in order for distraction to occur, the party to the conversation must be an active participant. That's not what happened here.

Mr. Patten answered the call from his cousin the morning of September 9, 2019. The call was connected at approximately 5:35 a.m. – well before the 5:39 a.m. accident. In fact, Mr. Patten likely hadn't exited I-176 yet. Mr. Patten greeted his cousin and said “said hi to Zanna” – his wife – who was in the cab with him<sup>6</sup>. Mr. Hamilton wished the couple a Happy Anniversary and asked how their trip to Atlantic City to celebrate went. Zanna told Mr. Hamilton what they did and was letting him know that he should take his girlfriend to Atlantic City. Mr. Hamilton then heard Mr. Patten make a comment about a vehicle that was going to hit his trailer. He asked Zanna what happened and she ended the call. Mr. Patten uttered two sentences during this call – one to his cousin at the very beginning to say hi and the other an exclamation of Plaintiff's impending collision with his trailer.

This conversation would not indicate impairment due to distraction even by Dr. Strayer's standards. Instead, Dr. Strayer opines that it really was the salacious nature of the conversation that was distracting to Mr. Patten. Yet, Mr. Hamilton explained that he initially called to talk about what happened to him the night before with two ladies but never got the opportunity. Once it was determined that this “salacious” conversation never happened, Dr. Strayer indicated that Mr. Patten is actively monitoring the call or hypervigilant to the words used because Mr. Hamilton is a convicted sex offender<sup>7</sup>. Apparently, sex offenders cannot control what they say

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also, Oddi v. Ford Motor Company, 234 F.3d 136, 146 (3d. Cir. 2000)(internal citations omitted)(preclusion of expert opinion when there is too great a gap between the facts and the opinion).

<sup>6</sup> It was not unusual for Zanna Patten to drive with her husband on trips. Ms. Patten is a hair stylist by trade. The name of the Company is “Blue and Green Trucking and Hair, LLC”, a nod to her vocation.

<sup>7</sup> Mr. Hamilton's sex offender status will not be presented to the jury pursuant to Fed.R.Evid. 609.

and offer salacious comments without warning. Mr. Patten never said anything about being anxious, worried, or even slightly concerned about what his cousin was going to say – as far as he was concerned – they were discussing his Anniversary. It was not unusual for his cousin to call since he was also on his way to work. Dr. Strayer instead attributed Mr. Hamilton’s thought process (i.e. the indication by Mr. Patten that his wife was in the cab) to that of Mr. Patten. This is not supported by the evidence.

**C. Voyager Is Not Vicariously Liable For Its Independent Contractor’s Employee, Mr. Patten**<sup>8</sup>

Voyager hired a qualified independent contractor, Blue & Green Trucking & Hair, LLC (“Blue & Green”) to transport solid waste from transfer stations to landfills and/or incinerators. Plaintiff concedes that Mr. Patten was not an employee of Voyager but rather of its independent contractor, Blue & Green. Plaintiff also agrees that Voyager lacked the requisite control over Blue & Green or Mr. Patten that would permit a factfinder to find an employee/employer or master/servant relationship between Mr. Patten and Voyager.

In Pennsylvania, a contractee is not liable for the negligent acts or omissions of its independent contractor. Drexel v. Union Prescription Centers, Inc., 582 F.2d 781, 785 (3d. Cir. 1978); Drummond v. Hilton Hotel Corp., 501 F. Supp. 29, 30 (E.D. Pa. 1980); Feller v. New Amsterdam Casualty Co., 363 Pa. 483, 486 (Pa. 1950); Hammermill Paper Co. v. Rust Engineering Co., 243 A.2d 389, 392 (Pa. 1968; and Universal Am-Can, Ltd. v. WCAB (Minteer), 762 A.2d 328, 333 (Pa. 2000). There are limited exceptions to this rule. See, Astoria Fed.Sav. & Loan Ass’n v. Solimino, 501 US 104, 108 (1991)(holding that well-established common law principles should apply unless it is evident that the common law contradicts a statutory purpose).

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<sup>8</sup> Of course, this also requires Plaintiff to first demonstrate that Mr. Patten was negligent.

In an attempt to circumvent this rule, Plaintiff alleges that Voyager is responsible the actions of Mr. Patten through the definition section of the Federal Motor Carrier Safety Administration (“FMCSA”) regulations and as a franchise under the Restatement (Second) of Torts § 428. Plaintiff requests a novel and broad application of 49 CFR § 390.5T and Restatement (Second) of Torts § 428. Plaintiff cannot be successful as a matter of law.

There is no dispute that Voyager is an exempt for hire motor carrier that is in the business of transporting garbage from transfer stations to landfills or incinerators. At the time of the accident, Blue & Green was also an exempt motor carrier transporting garbage. As exempt motor carriers, Voyager and Blue & Green are not subject to the economic or financial regulations of the FMCSA.

1. The FMCSA Definition Section In Part 390 Does Not Impute Liability To Exempt Motor Carriers

The mechanism that subjects exempt motor carriers to the FMCSA safety regulations (e.g. hours of service, qualifications of drivers, conditions of vehicles) is 49 USC § 31502. In fact, the purpose of Part 390 (FMCSA Safety regulations chapter) state: “This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter”. 49 CFR § 390.1.

Plaintiff asserts that independent contractors are included under the definition “employee” in the FMCSA regulations<sup>9</sup>. See, 49 CFR § 390.5T (defining employee and employer as:

**Employee** means any individual, other than employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler...

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<sup>9</sup> Plaintiff relies on a suspended version of the definitions in Part 390. See, e.g. 49 CFR §390.5 compared with 49 CFR § 390.5T.

**Employer** means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it...).

However, the terms “employee” and “employer” under § 390.5 are limited to the operation of a “commercial motor vehicle”. Regulations applying to commercial motor vehicles do not extend to Voyager or Blue & Green because they do not transport property. See, 49 CFR § 390.5T, commercial motor vehicle (defined as: “...any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property...”).

It is well established in Pennsylvania that garbage is not “property” under the Motor Carrier Act because it has little to no economic value. See, Mazzarella v. FAST Rig Support, LLC, 115 F. Supp. 3d 500 (M.D. Pa. 2015), questioned on other grounds and affirmed in 2016 US App. LEXIS 9687 (3d. Cir. 2016). This is not a departure from the prior agencies’ interpretation of property either. Pennsylvania’s Interstate Commerce Commission (“ICC”) and the Department of Transportation (“DOT”) also interpreted the term “property” to exclude garbage. See, Wilson v. IESI NY Corp., 444 F. Supp. 2d 298 (M.D. Pa. 2006). This determination has been the same regardless of which side takes the position that garbage should be considered property – the modern Pennsylvania Courts decided that garbage is not property<sup>10</sup>.

Also, Plaintiff’s position that the inclusion of a term in the definition section of Part 390 requires mandatory application is not supported legally or factually. There are a lot of definitions for part 390 and not every definition will apply. For example, this definition section includes, e.g., “farm vehicle driver”, “intermodal equipment provider”, “private motor carrier”,

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<sup>10</sup> Plaintiff indicated that this Court should consider Fair Labor Standards Act (“FLSA”) litigation where garbage haulers sought an exception to the FLSA’s minimum wages. The courts came to the same conclusion – trash is not property. This can be distinguished from recyclables that have economic value. See, e.g., Mazzarella v. FAST Rig Support, LLC, 115 F. Supp. 3d. 500 (M.D. Pa. 2015); Raymond v. Mid-Bronx Haulage Corp., 2017 US Dist. LEXIS 50430 (S.D.N.Y. 2017).

“shipper”, etc. No one is suggesting that Voyager is all of these types of carriers just because they too are subject to safety regulations and are contained in the definition section of Part 390. Defendants’ position is further supported by the FMCSA’s expansion of the old definitions (i.e. 49 CFR § 390.5) has been extended to include a separate and distinct definition for “exempt motor carrier”. See, 49 CFR §390.5T. In fact, when Pennsylvania has imputed vicarious liability for the negligent acts of an independent contractor under the FMCSA safety regulations, it did not involve an exempt motor carrier or trash hauler. See, e.g., Shelton v. Gure, 2021 Dist. LEXIS 102307 (M.D. Pa. 2021).

2. There Is No Franchise Under Restatement (Second) of Torts § 428 (“§ 428”)

Plaintiff asserts that Voyager is vicariously liable for its independent contractor under a § 428 franchise bestowed upon Voyager by the US DOT, Pennsylvania Department of Environmental Protection (“PA DEP”), and New Jersey’s Department of Environmental Protection (“NJ DEP”). Ignoring that Pennsylvania has not adopted § 428<sup>11</sup>, vicarious liability through a § 428 franchise is only appropriate when:

An individual or a corporation carrying on an activity which can be lawfully carried on only under a franchise granted by public authority and which involves an unreasonable risk of harm to others, is subject to liability for physical harm caused to such others by the negligence of a contractor employed to do work carrying on the activity.

Restatement (Second) of Torts § 428.

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<sup>11</sup> In fact, the Restatement is supposed to “offer a synthesis of American common law”. See, Tincher v. Omega Flex, 104 A.3d. 328, 339 (Pa. 2014). Adoption of the Restatement cannot depart dramatically from the well and long-established common law because the Restatement has not been vetted through the legislative process. See, Tincher at 340-341. “The Court is not in a position to upend risks and expectations premised upon broad-based arguments calling for a judgment about socially acceptable economic incentives; the legislative setting is a preferable forum for such an endeavor”. Tincher at 340 (internal citations omitted).

See also, Aubourg v. Eyre Bus. Serv., 2021 US Dist. LEXIS 239346, \*15 (W.D. Pa. 2021)(the district courts have applied § 428 when “common carriers have subcontracted others to perform their duties and the acts of the subcontractors caused harm to third parties”).

Even if Pennsylvania adopted § 428, it would not apply the strict liability approach that Plaintiff is seeking in this case (i.e. you have a license = franchise/non-delegable duty; you have a permit = franchise/non-delegable duty; you are regulated in any way by any governmental agency = franchise/non-delegable duty). Instead, Pennsylvania has been measured/balanced in evaluating a § 428 argument.

Not every type of carrier is bestowed with operating authority by the DOT. In fact, the DOT characterizes trash haulers, like Voyager, as exempt-for-hire carriers. Defendants’ exempt for hire status is not in dispute here. Ultimately, trash haulers are exempt because garbage is viewed as having no or little value and does not constitute “property”. Importantly, exempt for hire carriers do not receive operating authority or a motor carrier (“MC”) number, and therefore, no authority or privilege – or § 428 franchise – is bestowed by the DOT. See, Wilson v. IESI NY Corp., 444 F. Supp.2d 298, 312 (M.D. Pa. 2006)(the Pennsylvania District Court acknowledges that the lack of operating authority give by the DOT means that there is no franchise).

Next, Plaintiff asserts that the § 428 franchise is created by obtaining Pennsylvania’s Act 90 permit and New Jersey’s Act 901 license. However, these are also insufficient mechanisms to create a § 428 franchise and support vicarious liability. The case law in each respective state reserve a § 428 franchise analysis to authorized-for-hire carriers – those that are required to obtain operating authority from the DOT. See, e.g., Venuto v. Robinson, 118 F.2d 679 (3d Cir. 1941); Longo v. Pennsylvania Electric Co., 618 F. Supp. 87, 90-91 (W.D. Pa. 1985); Kissell v. Motor Age Transit Lines, Inc., 53 A.2d 593 (Pa. 1947); Courtney v. Ivanov, 2015 US Dist.



LEXIS 81165 (W.D. Pa. 2015); Trautman v. Higbie, 89 A.2d 649 (NJ 1952). None impose § 428 liability on exempt-for-hire carriers like Defendants<sup>12</sup>.

Also, Blue & Green operated under its own Pennsylvania authorization permit when it was transporting the garbage within the Commonwealth and was not acting under Voyager's authority. New Jersey's statutes specifically limit its regulations related to the transportation of garbage to activities within its own borders and acknowledges that alternative or additional authority may be required outside of New Jersey. See, N.J.S.A. § 13:1E-9.3. Here, the accident happened in Pennsylvania. Defendants submit that the Court should focus on how Pennsylvania evaluates

#### **D. Blue & Green and Voyager Did Not Do Anything Wrong**

Blue & Green is the independent contractor of Voyager – not Mr. Patten. Although direct and vicarious claims were asserted against Blue & Green, Plaintiff does not criticize Blue & Green's conduct. In fact, none of Plaintiff's experts offer any criticism of Blue & Green.

The direct liability claims against Voyager are purportedly that Voyager failed to properly train Mr. Patten – their independent contractor's driver/employee - or enforce their internal cell phone policy. To support Plaintiff's direct negligence claims against Voyager, Plaintiff offers the expert opinion of trucking expert, Jon Paul Dillard<sup>13</sup>. Plaintiff concedes that Mr. Dillard will not opine that Voyager was a statutory employer of Mr. Patten. Mr. Dillard also concedes that Mr. Patten satisfied the qualification necessary to become a commercial driver. See, 49 CFR 391, et seq.

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<sup>12</sup> Blue & Green also had its own authorization permit from the PA DEP to transport garbage in the Commonwealth and was not acting under Voyager's permit.

<sup>13</sup> Defendants filed a motion in *limine* to preclude and/or limit Mr. Dillard's testimony pursuant to Fed.R.Evid. 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 43 F.3d 1311 (9<sup>th</sup> Cir. 1995). Mr. Dillard has been precluded from offering conclusions that failing to offer defensive driving training caused an accident or that lack of training constitute a conscious disregard for the motoring public. Plaintiff has agreed to voluntarily limit the scope of Mr. Dillard's testimony.

Other than the entry level training required to obtain a commercial motor vehicle license (“CDL”), the FMCSA does not require any additional training. See, e.g., 49 CFR 383.111, 383.113, 380.107, 380.109, 383.37, and 383.1. Training is certainly not required to be provided to employees of independent contractors. Instead, Voyager confirmed Blue & Green’s driver, Mr. Patten, had, e.g., a valid CDL, did not have any disqualifying motor vehicle violations, and passed a road test. Mr. Patten also underwent an orientation that included some driver training – this was not required. Of note, Plaintiff is not asserting a negligent entrustment claim and there is no dispute that Mr. Patten is a qualified commercial motor vehicle driver.

Mr. Dillard seems to suggest that Mr. Patten’s lack of operating authority rendered Voyager responsible for Mr. Patten’s qualifications and training because they hired him to drive his vehicle on behalf of Voyager. This is not accurate. First, Voyager contracted with Blue & Green and not Mr. Patten. Secondly, neither Voyager or Blue & Green had operating authority because they transport garbage – not property or people. Neither Voyager or Blue & Green were required to have operating authority.

Voyager utilized both independent contractors and their own employee drivers. The Voyager employee drivers operated Voyager trucks and operated under Voyager’s authority. In contrast, independent contractors had their own equipment and operated under their own authority. Voyager’s internal cell phone policy only applied to their employee drivers. In fact, Voyager lacked the requisite control over their independent contractors to implement and enforce their own internal policies against their contractor’s employees.

The argument that Voyager had a duty to enforce their internal cell phone policy against its independent contractor’s employee, Mr. Patten, and failure to do so constituted a breach, is a back door approach to submitting inadmissible evidence. Plaintiff’s experts, Mr. Dillard and Dr. Strayer do not offer the opinion that Voyager’s internal cell phone policy is customary,

widespread, generally accepted, and/or the standard in the trucking industry. Without this, Voyager's more restrictive internal cell phone policy cannot be used as the equivalent or demonstrative of the measure of care to be applied in this case.

It is well established in Pennsylvania that internal policies that go above and beyond common law or statutory standards of care, do not create a new or higher standard of care as a matter of law and public policy. See, e.g., Aiello v. Chester Downs, LLC, 2021 US Dist. LEXIS 132566, \*16 (E.D. Pa. 2021)(finding that internal policies were not the same as duty of care, especially when the internal policy offers greater protection to the public); McNelis v. Pa. Power & Light Co., 867 F.3d 411, 418 (3d Cir. 2017)(violations of internal policies by itself does not equate to violation of the law); Keifer v. Reinhart Foodservices, LLC 2012 US Dist. LEXIS 12209, fn. 10 (W.D. Pa. 2012)(internal policies do not necessarily represent the standard of care); Callison v. City of Philadelphia, 430 F.3d 117, 121 (3d Cir. 2005)(where internal policies conflict with law, the law controls and compliance with the law is sufficient); Heichel v. Marriott Hotel Servs., 2019 US Dist. LEXIS 85136, \*10 (E.D.Pa. 2019)(internal citations omitted)(finding that company rules or internal manuals by themselves do not establish a standard of care).

Instead, the FMCSA regulations set the standard as it relates to cell phone use and driver conduct/safety. See, e.g., 49 CFR §§ 392.82, 382.103, et seq., 383.113, et seq., 391.11, et seq. and 392.10, et seq. Blue & Green's driver did not violate the FMCSA regulations regarding cell phone use.

Ultimately, if Plaintiff cannot establish a standard of care (i.e. duty), there can be no breach, and no finding of negligence.

#### **IV. ALLEGED DAMAGES**

Plaintiff alleges past and future medical expenses and pain and suffering. There is no loss of earnings claim.

The parties stipulate that there is \$981,711.87 in related past medical expenses.

Plaintiff's life care planner asserts a total \$7,504,868.28 in projected future medicals.

This includes a \$1.8 million dollar level three prosthetic that exceeds Plaintiff's physical capabilities and the potential for a future left leg amputation. This life care plan also assumes that Plaintiff's life expectancy is that of an average male and fails to consider his increased risk of infection/sepsis, falls, deep vein thrombosis, and immobility-related pneumonia which will decrease his life span by 15 years.

In contrast, Defendants' life care planner projects future medical expenses to be \$3,802,774.77. To the extent that Plaintiff's left leg is also amputated, defense projected future medicals are \$4,528,291.32.

**V. WITNESSES TO BE CALLED AT TRIAL<sup>14</sup>**

In addition to the parties of this matter and their respective representatives, if any, Defendants may call any of the following witnesses in presentation of its case in chief:

**A. Liability**

1. Casey Cairns  
1396 Geigertown Road  
Geigertown, PA 19523
2. Officer Kyle Tranovich  
Officer Thomas Brecker  
Sargent Matthew Menna  
c/o Caernarvon Township Police Department  
330 Main Street  
Morgantown, PA
3. Christopher Smith  
Kevin Bambrick  
Honeybrook-Elverson EMS  
4458 Main St.  
Elverson, PA 19520

---

<sup>14</sup> Defendants reserve the right to modify the same prior to trial, if necessary.

4. Cortney Pusch  
Matthew Keller  
Jordan Greenwood  
Dispatchers  
Berks County Department of Emergency Services  
2561 Bernville Rd.  
Reading, PA 19605
5. Kelly Motter  
Responding EMT  
Brandywine Hospital Medical Transport  
201 Reeceville Road  
Coatesville, PA 19320
6. Deputy Pete Hornberger  
Captain Mike Wilson  
Lieutenant Keith Gehman  
Officer Tim Cunningham  
Keith McGowan  
Jonathan Porter  
Responding Firefighters and Officers  
Twin Valley Fire Company  
4456 Main Street  
Elverson, PA 19520
7. Barry Readinger  
58 Regal Lane  
Birdsboro, PA 19508
8. Tyler Sakal  
41 West Fifth Street  
Pottstown, Pennsylvania 19464
9. Jeffrey Reed  
305 Blimline Road  
Mohnton, PA 19540
10. Timothy Mast  
305 East Main Street, Apartment 1  
New Holland, PA. 17557
11. Robert Lavery  
Beiler Brothers Roofing  
836 Peters Road  
New Holland, PA 17557

12. Andre Hamilton  
35 Prescott Avenue  
Garfield, NJ 07026
13. Zanna Patten  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
14. Liam Tanelli  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
15. John Costa  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
16. Justin Haskins  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
17. Todd Hoover  
Design Research Engineering  
46475 Desoto Court  
Novi, MI 48377
18. Dr. Jeffrey Muttart  
Crash Safety Research Center  
42 East High Street, #105B  
East Hampton, CT 91604
19. Dr. David Curry  
Solution Engineering Group  
420 N. Main Street  
Montgomery, IL 60538
20. Dr. Tara Moore  
Tara Moore Consulting  
273 N. Easton Road  
Glenside, PA 19038

21. Dr. Michael McCabe  
Exigent  
292 Main Street  
Harleysville, PA 19438
22. Kirk Cummings  
1761 Skiers Alley  
Lapeer, MI 48446
23. Mark Lanterman  
Computer Forensic Services  
800 Hennepin Avenue, 5<sup>th</sup> Floor  
Minneapolis, MN 55403
24. Dr. L. Matthew Schwartz  
1108 E. Willow Grove Avenue  
Wyndmoor, PA, 19038
25. Joseph Purfield  
c/o Harbor Business Compliance Corporation Lancaster  
1830 Colonial Village Lane  
Lancaster, PA 17601
26. Stanley Andrews  
Ei Consultants, LLC  
PO Box 610  
2575 E. Heritage Parkway, 2<sup>nd</sup> Floor  
Farmington, AR 72730
27. Randy Nelson  
Motorcycle Dynamics  
701 S. Andresea Drive, Suite A  
Escondido, CA 92029
28. Joellen Gill  
Applied Cognitive Sciences  
10501 S. Lambs Lane  
Mica, WA 99023
29. Jon Paul Dillard  
JP Transportation Safety Consulting  
PO Box 382105  
Birmingham, AL 35238



30. Dr. David Strayer  
Department of Psychology  
380 South, 1530 East, Room #502  
University of Utah  
Salt Lake City, UT 84112-0251
31. Dr. Calum McRae  
ARCCA, Incorporated  
2288 Second Street Pike  
PO Box 78  
Penns Park, PA 18943
32. Dr. Timur Durrani  
2507 Ashby Avenue  
Berkeley, CA 94705
33. Dr. Ryan Michel  
850 Knitting Mills Way  
Wyomissing, PA 19610
34. Dr. Filip Moshkovsky  
Reading Hospital  
420 S. 5<sup>th</sup> Avenue  
West Reading, PA 19611
35. Dr. Elliott H. Myrowitz  
Wilmer Eye Institute at Green Spring Station  
10753 Falls Road, Suite 455  
Lutherville, MD 21093
36. Records Custodians, Representatives, and/or Corporate Designees of:
  - a. Omni Insurance Company a/k/a Good2Go Insurance  
1400 Union Meeting Road, Suite 250  
Blue Bell, PA 19422
  - b. Pennsylvania Department of Transportation  
Bureau of Driver Licensing  
Vehicle Record Services  
PO Box 68695  
Harrisburg, PA 17106-8695
  - c. Dr. Jeffrey Mumie  
315 Darby Square, Suite 100  
Elverson, PA 19520  
  
127 Main Street  
Harleysville, PA 19438

- d. UPMC Community Health Choices  
U.S. Steel Tower, 10<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, PA 15219
- e. Commonwealth of Pennsylvania, Department of Motor Vehicles  
1101 South Front Street  
Harrisburg, PA 17104
- f. America's Best  
4617 Perkiomen Avenue  
Exeter Commons  
Reading, PA 19606
- g. Dr. Cain Cerra  
321 N. Furnace Street, Suite 160  
Birdsboro, PA 19508  
  
1265 Wayne Avenue  
119 Professional Center, St 312  
Indiana, PA 15701  
  
860 Lancaster Avenue  
Devon, PA 19333
- h. NovaCare Rehabilitation  
321 N. Furnace Street, Suite 160  
Birdsboro, PA 19508
- i. Romed Ambulance  
2860 Hedley Street  
Philadelphia, PA 19137
- j. Bollman Hat Company  
110 E. Main Street  
Adamstown, PA 19501
- k. State Farm Insurance Company  
c/o Corporation Service Company  
2595 Interstate Drive, Ste 103  
Harrisburg, PA 17110
- l. Caernarvon Township Police Department  
3307 Main Street  
Morgantown, PA 19543

- m. Charles E. Barton  
Penn State St. Joseph Medical Center  
2494 Bernville Road, Ste 106  
Reading, PA 19605
- n. Dr. Krystle Chuong  
957 Ben Franklin Highway W.  
Douglassville, PA 19518
- o. Coventry Dentistry  
2317 Pottstown Pike  
Pottstown, PA 19465
- p. The Performance Group  
824 Penn Avenue  
Wyomissing, PA 19610
- q. Dr. Donovan C. Young  
2733 Papermill Road  
Reading, PA 19610
- r. Dr. David S. Goldberg  
1 Granite Point Drive  
Wyomissing, PA 19610
- s. Garden Spot Middle School  
669 E. Main Street  
New Holland, PA 17557
- t. Cocalico High School  
810 South 4<sup>th</sup> Street  
Denver, PA 17519
- u. Dr. Nathan Daigle  
3130 Princeton Road, Suite B  
Fleetwood, PA 19522
- v. Burmans Medical  
210 Bridgewater Road, Ste. 1  
Aston, PA 19014
- w. Tower Health Plastic Surgery  
2610 Keiser Boulevard  
Reading, PA 19610
- x. Western Berks Ambulance Association  
2506 Belmont Avenue  
Reading, PA 19609

- y. Reading Nephrology  
301 S. 7<sup>th</sup> Avenue, Ste. 355  
West Reading, PA 19611-1436
- z. Southern Berks EMS  
769 Mountain View Road  
Reading, PA 19607
- aa. Commonwealth of Pennsylvania Auto Tags  
377 E. High Street  
Pottstown, PA 19464
- bb. Pottstown Hospital  
1600 E. High Street  
Pottstown, PA 19464
- cc. Aetna  
151 Farmington Avenue  
Hartford, CT 06156
- dd. Walmart Pharmacy  
c/o CT Corporation System  
600 North 2<sup>nd</sup> Street, Suite 401  
Harrisburg, PA 1701
- ee. CoreSource  
1280 North Plum Street  
Lancaster, PA 17608
- ff. Doug's Family Pharmacy  
101 Darby Square  
Elverson, PA 19520
- gg. Horizon Healthcare  
1070 New Holland Avenue  
Lancaster, PA 17601
- hh. Pennsylvania Department of Revenue  
Director's Office  
Bureau of Administrative Services  
12<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17128-1200
- ii. In Home Oxygen  
103 Lancaster Avenue  
Reading, PA 19611-1622

- jj. Pottstown Wound Center  
1600 E. High Street  
Pottstown, PA 19464
- kk. Star Marketing and Administration, Inc.  
400 N. Field Drive  
Lake Forest, IL 60045
- ll. Tower Health  
420 S. Fifth Ave.  
West Reading, PA 19611  
  
219 N. Broad St., 4<sup>th</sup> Floor  
Philadelphia, PA 19107  
  
1600 E. High Street  
Pottstown, PA 19464
- mm. Medline Industries  
Three Lakes Drive  
Northfield, IL 60093
- nn. GPS Physicians Group  
5485 Perkiomen Avenue  
Reading, PA 19606
- oo. Dr. Joseph W. Strangarity  
320 School Road  
Denver, PA 17517
- pp. Twin Valley Fire Department  
4456 Main Street  
Elverson, PA 19520
- qq. Ability Prosthetics and Orthotics  
660 W. Lincoln Hwy  
Exton, PA 19341
- rr. Orthopaedics Associates of Reading  
4885 Demoss Rd. #102  
Reading, PA 19606
- ss. Tower Health at Home – Berks  
1170 Berkshire Blvd.  
Wyomissing, PA 19610

- tt. Conduent  
100 Campus Dr., # 200  
Florham Park, NJ 07932
- uu. Brandywine Hospital Medical Transport  
201 Reeceville Rd.  
Coatesville, PA 19320
- vv. Heck Construction  
143 Main St  
Denver, PA 17517
- ww. GEICO Insurance Company  
1 GEICO Blvd.  
Fredericksburg, VA 22412
- xx. Encompass Health Rehabilitation Hospital  
1623 Morgantown Rd.  
Reading, PA 19607
- yy. Elverson Honeybrook EMS  
4458 Main St.  
Elverson, PA 19520
- zz. Berks Radiation Oncology Association  
6<sup>th</sup> Ave. and Spruce Streets  
West Reading, PA 19611
- aaa. Help at Home  
1202 Township Line Road  
Chalfont, PA 18914
- bbb. William Champagne  
246 Colonial Drive  
Akron, PA 17501
- ccc. Berks County Department of Emergency Services  
Direct Link Technical Center  
2561 Bernville Rd.  
Reading, PA 19605
- ddd. Social Security Administration  
Division of Earnings Record Operations  
PO Box 33003  
Baltimore, MD 21290-3003

201 Penn Street, Suite 200  
Reading, PA 19601

- eee. Beiler Brothers, LLC  
836 Peters Road  
New Holland, PA 17557
- fff. Dr. Thiruvenkatas Dhurairaj  
301 S. 7<sup>th</sup> Avenue, Suite 135  
Reading, PA 19611
- ggg. Dr. Michael Sachenik  
301 S. 7<sup>th</sup> Avenue, Ste 135  
Reading, PA 19611
- hhh. ACME  
500 S. Muddy Creek Road  
Denver, PA 17517
- iii. Vaitl Service, Inc.  
403 West Girl Scout Road  
Stevens, PA 17578
- jjj. Reono Bertagnolli, A Medical Group  
2820 N. Ontario Street  
Burbank, CA 91504-2015
- kkk. Berkshire Rehab Center  
5501 Perkiomen Road  
Reading, PA 19606
- lll. TracFone Wireless, Inc.  
9700 Northwest 112<sup>th</sup> Avenue  
Miami, FL 33178
- mmm. Brooks Group Insurance Agency, LLC  
70 Bridge Plaza Drive  
Manalapan, NJ 07726
- nnn. Endurance American Insurance Company  
c/o Sampo International Insurance  
3333 New Hyde Park Road, Suite 210  
New Hyde Park, NY 11042



- ooo. Hallmark Specialty Insurance Company  
c/o Registered Agent  
Kerr, Irvine Rhodes & Ables  
201 Robert S. Kerr Avenue, Suite 600  
Oklahoma City, OK 73102-4267
- ppp. Dr. Jerry Szych  
Natural Medicine and Rehabilitation  
399 Campus Drive, 1<sup>st</sup> Floor  
Somerset, NJ 08873
- qqq. Reliance Partners  
555 Walnut St, Suite 280  
Chattanooga, TN 37402
- rrr. Prime Property & Casualty Insurance  
303 W. Madison Street, Suite 2075  
Chicago, IL 60606
- sss. Sampo International  
3333 New Hyde Park Road, Suite 210  
New Hyde Park, NY 11042
- ttt. Statewide Resources Insurance Agency, LLC  
655 Kearny Ave., Ste. 201  
Kearny, NJ 07032
- uuu. T-Mobile  
Law Enforcement Relations  
4 Sylvan Way  
Parsippany, NJ 07054
- vvv. Motive formerly known as Keep Truckin'  
c/o Incorporating Services, Ltd.  
3500 South Dupont Highway  
Dover, DE 19901
- www. Help at Home Services, LLC  
c/o Registered Agents, Inc.  
502 W. 7<sup>th</sup> Street, Ste. 100  
Erie, PA 16502
- xxx. Health at Home Care, LLC  
225 Cornell Avenue  
Pittsburgh, PA 15229

- yyy. Rider Insurance  
581 Main Street  
Woodbridge, NJ 07095
- zzz. Gage Personnel Employment Services  
348 N. Reading Road  
Ephrata, PA 17522
- aaaa. SMS Builders  
201 Commerce Drive, #A  
New Holland, PA 17557
- bbbb. Reamstown Elementary School  
44 S. Reamstown Road  
Reamstown, PA 17567
- cccc. French Creek Golf Course  
4500 Conestoga Road  
Elverson, PA 19520
- dddd. Brecknock Elementary School  
1332 Alleghenyville Road  
Mohnton, PA 19540
- eeee. Express Employment Professionals  
840 North Park Road  
Wyomissing, PA 19610
- ffff. Dr. Michael Williams  
Thomas Jefferson University Hospital  
111 S. 11<sup>th</sup> Street, Ste. 524  
Philadelphia, PA 19107
- gggg. Dr. Brian Lockhart  
420 S. 5<sup>th</sup> Avenue  
Suite D1, 1<sup>st</sup> Floor  
Reading, PA 19611
- hhhh. American Select Insurance Company  
One Park Circle  
Westfield Center, OH 44251-5001
- iiii. Progressive Insurance  
6300 Wilson Mills Road  
Mayfield Village, OH 44143

- jjjj. Carolyn's Notary and Auto Tags  
58 Cooperfield Circle  
Lititz, PA 17543
- kkkk. Abel's Notary Service  
630 Lancaster Avenue  
Columbia, PA 17512
- llll. Vitu  
1500 Paxton Street, Suite 103  
Harrisburg, PA 17104
- mmmm. Integrated Medical Transport, LLC  
2999 Revere Street  
Harrisburg, PA 17111
- nnnn. Dr. Mark Wagner  
Murphy & Wagner DO  
623 N 5th Street  
Reading, PA 19601
- oooo. Dr. Barbara Hoffer  
1623 Morgantown Road  
Reading, PA 19607-9455
- pppp. Caernarvon Fire Department  
2145 Main Street  
Narvon, PA 17555
- qqqq. Berks County Orthopedics  
438 Walnut Street  
Reading, PA 19601
- rrrr. Kelly Services  
86 Commerce Drive  
Wyomissing, PA 19610
- ssss. Employment-A-Plus  
3 Burkhardt Lane  
Newmanstown, PA 17073
- tttt. Wendy's  
1075 S. State Street  
Ephrata, PA 17522
- uuuu. People Ready  
3276 N. 5<sup>th</sup> Street Highway  
Reading, PA 19605

vvvv. Blue Ball Elementary School  
126 Ewell Road  
East Earl, PA 17519

www. Aerotek Staffing Agency  
999 Berkshire Blvd., Ste 180  
Wyomissing, PA 19610

xxxx. Morgan Truck Body, LLC  
111 Morgan Way  
Morgantown, PA 19543

yyyy. Pennsylvania Department of Health  
625 Forster Street  
Health & Welfare Building, Room 628  
Harrisburg, PA 17120

zzzz. Bureau of Program Integrity  
PO Box 8486  
Harrisburg, PA 17105

aaaa. Pennsylvania Department of Human Services  
625 Forster Street  
Harrisburg, PA 17120

bbbb. Papa John's  
705 W. Main Street  
Ephrata, PA 17522

cccc. Dr. Andrew S. In  
3307 Lincoln Highway E  
Thorndale, PA 19372

dddd. St. Joseph Health Network @ Elverson  
45 S. Pine Street  
Elverson, PA 19520

eeee. Dr. Yooson E. Kim  
Family Dentistry Morgantown  
3411 Main Street  
Morgantown, PA 19543

ffff. Schaffer's Automotive, LLC  
4579 N. Twin Valley Rd.  
Elverson, PA 19520

ggggg. Andrew Wyatt Putt  
461 Charles Road  
Lancaster, PA 17603

hhhhh. Douglas E. Bird  
800 S. Cameron Street  
Harrisburg, PA 17104

iiii. Eye Med Vision  
c/o National Regional Agents  
116 Pine Street, 3<sup>rd</sup> Floor, Suite 320  
Harrisburg, PA 17101

jjjj. Integrated Medical Group  
82 Tunnel Road  
Pottsville, PA 17901-3869

kkkkk. Thomas W. Novy, Jr.  
517 Hellam Street  
Wrightsville, PA 17368

llll. Wendy M. Pogue  
218 Lincoln Avenue  
Ephrata, PA 17502

## **B. Damages**

1. Casey Cairns  
1396 Geigertown Road  
Geigertown, PA 19523
2. Officer Kyle Tranovich  
Officer Thomas Brecker  
Sargent Matthew Menna  
Investigating Officers  
c/o Caernarvon Township Police Department  
330 Main Street  
Morgantown, PA
3. Christopher Smith  
Kevin Bambrick  
Honeybrook-Elverson EMS  
4458n St.  
Elverson, PA 19520
4. Cortney Pusch  
Matthew Keller  
Jordan Greenwood

Dispatchers  
Berks County Department of Emergency Services  
2561 Bernville Rd.  
Reading, PA 19605

5. Kelly Motter  
Responding EMT  
Brandywine Hospital Medical Transport  
201 Reeceville Road  
Coatesville, PA 19320
6. Deputy Pete Hornberger  
Captain Mike Wilson  
Lieutenant Keith Gehman  
Officer Tim Cunningham  
Keith McGowan  
Jonathan Porter  
Responding Firefighters and Officers  
Twin Valley Fire Company  
4456 Main Street  
Elverson, PA 19520
7. Barry Readinger  
58 Regal Lane  
Birdsboro, PA 19508
8. Tyler Sakal  
41 West Fifth Street  
Pottstown, Pennsylvania 19464
9. Jeffrey Reed  
305 Blimline Road  
Mohnton, PA 19540
10. Timothy Mast  
305 East Main Street, Apartment 1  
New Holland, PA. 17557.
11. Robert Lavery  
Beiler Brothers Roofing  
836 Peters Road  
New Holland, PA 17557
12. Andre Hamilton  
35 Prescott Avenue  
Garfield, NJ 07026

13. Zanna Patten  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
14. Liam Tanelli  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
15. John Costa  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
16. Justin Haskins  
c/o Law Offices of Thomas J. Wagner, LLC  
8 Penn Center, 6<sup>th</sup> Floor  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103
17. Dr. Tara Moore  
Tara Moore Consulting  
273 N. Easton Road  
Glenside, PA 19038
18. Dr. L. Matthew Schwartz  
1108 E. Willow Grove Avenue  
Wyndmoor, PA 19038
19. Heidi Fawber  
PO Box 299  
Mars, PA 16046
20. Mark Lanterman  
Computer Forensic Services  
800 Hennepin Avenue, 5<sup>th</sup> Floor  
Minneapolis, MN 55403
21. Joseph Purfield  
c/o Harbor Business Compliance Corporation Lancaster  
1830 Colonial Village Lane  
Lancaster, PA 17601



22. Dr. Calum McRae  
ARCCA, Incorporated  
2288 Second Street Pike  
PO Box 78  
Penns Park, PA 18943
23. Dr. Timur Durrani  
2507 Ashby Avenue  
Berkeley, CA 94705
24. Dr. Ryan Michels  
850 Knitting Mills Way  
Wyomissing, PA 19610
25. Dr. Filip Moshkovsky  
Reading Hospital  
420 S. 5<sup>th</sup> Avenue  
West Reading, PA 19611
26. Dr. Elliott H. Myrowitz  
Wilmer Eye Institute at Green Spring Station  
10753 Falls Road, Suite 455  
Lutherville, MD 21093
27. Dr. Guy Fried  
Magee Rehabilitation Hospital  
1513 Race Street  
Philadelphia, PA 19102
28. Dr. Ethan Geehr  
(Unknown)
29. Dale Allen Berry  
3000 Astoria Pines Circle  
Las Vegas, NV 89107
30. Valarie Parisi  
109 Windsong Drive  
Doylestown, PA 18901
31. Dr. Michael McCabe  
Exigent  
292 Main Street  
Harleysville, PA 19438
32. Treating Physicians and providers, Records Custodians and/or Corporate Designees  
of:

- a. Omni Insurance Company a/k/a Good2Go Insurance  
1400 Union Meeting Road, Suite 250  
Blue Bell, PA 19422
- b. Pennsylvania Department of Transportation  
Bureau of Driver Licensing  
Vehicle Record Services  
PO Box 68695  
Harrisburg, PA 17106-8695
- c. Dr. Jeffrey Mumie  
315 Darby Square, Suite 100  
Elverson, PA 19520  
  
127 Main Street  
Harleysville, PA 19438
- d. UPMC Community Health Choices  
U.S. Steel Tower, 10<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, PA 15219
- e. Commonwealth of Pennsylvania, Department of Motor Vehicles  
1101 South Front Street  
Harrisburg, PA 17104
- f. America's Best  
4617 Perkiomen Avenue  
Exeter Commons  
Reading, PA 19606
- g. Dr. Cain Cerra  
321 N. Furnace Street, Suite 160  
Birdsboro, PA 19508  
  
1265 Wayne Avenue  
119 Professional Center, St 312  
Indiana, PA 15701  
  
860 Lancaster Avenue  
Devon, PA 19333
- h. NovaCare Rehabilitation  
321 N. Furnace Street, Suite 160  
Birdsboro, PA 19508

- i. Romed Ambulance  
2860 Hedley Street  
Philadelphia, PA 19137
- j. Bollman Hat Company  
110 E. Main Street  
Adamstown, PA 19501
- k. State Farm Insurance Company  
c/o Corporation Service Company  
2595 Interstate Drive, Ste 103  
Harrisburg, PA 17110
- l. Caernarvon Township Police Department  
3307 Main Street  
Morgantown, PA 19543
- m. Charles E. Barton  
Penn State St. Joseph Medical Center  
2494 Bernville Road, Ste 106  
Reading, PA 19605
- n. Dr. Krystle Chuong  
957 Ben Franklin Highway W.  
Douglassville, PA 19518
- o. Coventry Dentistry  
2317 Pottstown Pike  
Pottstown, PA 19465
- p. The Performance Group  
824 Penn Avenue  
Wyomissing, PA 19610
- q. Dr. Donovan C. Young  
2733 Papermill Road  
Reading, PA 19610
- r. Dr. David S. Goldberg  
1 Granite Point Drive  
Wyomissing, PA 19610
- s. Garden Spot Middle School  
669 E. Main Street  
New Holland, PA 17557

- t. Cocalico High School  
810 South 4<sup>th</sup> Street  
Denver, PA 17519
- u. Dr. Nathan Daigle  
3130 Princeton Road, Suite B  
Fleetwood, PA 19522
- v. Burmans Medical  
210 Bridgewater Road, Ste. 1  
Aston, PA 19014
- w. Tower Health Plastic Surgery  
2610 Keiser Boulevard  
Reading, PA 19610
- x. Western Berks Ambulance Association  
2506 Belmont Avenue  
Reading, PA 19609
- y. Reading Nephrology  
301 S. 7<sup>th</sup> Avenue, Ste. 355  
West Reading, PA 19611-1436
- z. Southern Berks EMS  
769 Mountain View Road  
Reading, PA 19607
- aa. Commonwealth of Pennsylvania Auto Tags  
377 E. High Street  
Pottstown, PA 19464
- bb. Pottstown Hospital  
1600 E. High Street  
Pottstown, PA 19464
- cc. Aetna  
151 Farmington Avenue  
Hartford, CT 06156
- dd. Walmart Pharmacy  
c/o CT Corporation System  
600 North 2<sup>nd</sup> Street, Suite 401  
Harrisburg, PA 1701
- ee. CoreSource  
1280 North Plum Street  
Lancaster, PA 17608

- ff. Doug's Family Pharmacy  
101 Darby Square  
Elverson, PA 19520
- gg. Horizon Healthcare  
1070 New Holland Avenue  
Lancaster, PA 17601
- hh. Pennsylvania Department of Revenue  
Director's Office  
Bureau of Administrative Services  
12<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17128-1200
- ii. In Home Oxygen  
103 Lancaster Avenue  
Reading, PA 19611-1622
- jj. Pottstown Wound Center  
1600 E. High Street  
Pottstown, PA 19464
- kk. Star Marketing and Administration, Inc.  
400 N. Field Drive  
Lake Forest, IL 60045
- ll. Tower Health  
420 S. Fifth Ave.  
West Reading, PA 19611  
  
219 N. Broad St., 4<sup>th</sup> Floor  
Philadelphia, PA 19107  
  
1600 E. High Street  
Pottstown, PA 19464
- mm. Medline Industries  
Three Lakes Drive  
Northfield, IL 60093
- nn. GPS Physicians Group  
5485 Perkiomen Avenue  
Reading, PA 19606

- oo. Dr. Joseph W. Strangarity  
320 School Road  
Denver, PA 17517
- pp. Twin Valley Fire Department  
4456 Main Street  
Elverson, PA 19520
- qq. Ability Prosthetics and Orthotics  
660 W. Lincoln Hwy  
Exton, PA 19341
- rr. Orthopaedics Associates of Reading  
4885 Demoss Rd. #102  
Reading, PA 19606
- ss. Tower Health at Home – Berks  
1170 Berkshire Blvd.  
Wyomissing, PA 19610
- tt. Conduent  
100 Campus Dr., # 200  
Florham Park, NJ 07932
- uu. Brandywine Hospital Medical Transport  
201 Reeceville Rd.  
Coatesville, PA 19320
- vv. Heck Construction  
143 Main St  
Denver, PA 17517
- ww. GEICO Insurance Company  
1 GEICO Blvd.  
Fredericksburg, VA 22412
- xx. Encompass Health Rehabilitation Hospital  
1623 Morgantown Rd.  
Reading, PA 19607
- yy. Elverson Honeybrook EMS  
4458 Main St.  
Elverson, PA 19520
- zz. Berks Radiation Oncology Association  
6<sup>th</sup> Ave. and Spruce Streets  
West Reading, PA 19611

- aaa. Help at Home  
1202 Township Line Road  
Chalfont, PA 18914
- bbb. William Champagne  
246 Colonial Drive  
Akron, PA 17501
- ccc. Berks County Department of Emergency Services  
Direct Link Technical Center  
2561 Bernville Rd.  
Reading, PA 19605
- ddd. Social Security Administration  
Division of Earnings Record Operations  
PO Box 33003  
Baltimore, MD 21290-3003  
  
201 Penn Street, Suite 200  
Reading, PA 19601
- eee. Beiler Brothers, LLC  
836 Peters Road  
New Holland, PA 17557
- fff. Dr. Thiruvenkatas Dhurairaj  
301 S. 7<sup>th</sup> Avenue, Suite 135  
Reading, PA 19611
- ggg. Dr. Michael Sachenik  
301 S. 7<sup>th</sup> Avenue, Ste 135  
Reading, PA 19611
- hhh. ACME  
500 S. Muddy Creek Road  
Denver, PA 17517
- iii. Vaitl Service, Inc.  
403 West Girl Scout Road  
Stevens, PA 17578
- jjj. Reono Bertagnolli, A Medical Group  
2820 N. Ontario Street  
Burbank, CA 91504-2015
- kkk. Berkshire Rehab Center  
5501 Perkiomen Road  
Reading, PA 19606

- lll. TracFone Wireless, Inc.  
9700 Northwest 112<sup>th</sup> Avenue  
Miami, FL 33178
- mmm. Brooks Group Insurance Agency, LLC  
70 Bridge Plaza Drive  
Manalapan, NJ 07726
- nnn. Endurance American Insurance Company  
c/o Sampo International Insurance  
3333 New Hyde Park Road, Suite 210  
New Hyde Park, NY 11042
- ooo. Hallmark Specialty Insurance Company  
c/o Registered Agent  
Kerr, Irvine Rhodes & Ables  
201 Robert S. Kerr Avenue, Suite 600  
Oklahoma City, OK 73102-4267
- ppp. Dr. Jerry Szych  
Natural Medicine and Rehabilitation  
399 Campus Drive, 1<sup>st</sup> Floor  
Somerset, NJ 08873
- qqq. Reliance Partners  
555 Walnut St, Suite 280  
Chattanooga, TN 37402
- rrr. Prime Property & Casualty Insurance  
303 W. Madison Street, Suite 2075  
Chicago, IL 60606
- sss. Sampo International  
3333 New Hyde Park Road, Suite 210  
New Hyde Park, NY 11042
- ttt. Statewide Resources Insurance Agency, LLC  
655 Kearny Ave., Ste. 201  
Kearny, NJ 07032
- uuu. T-Mobile  
Law Enforcement Relations  
4 Sylvan Way  
Parsippany, NJ 07054



- vvv. Motive formerly known as Keep Truckin'  
c/o Incorporating Services, Ltd.  
3500 South Dupont Highway  
Dover, DE 19901
- www. Help at Home Services, LLC  
c/o Registered Agents, Inc.  
502 W. 7<sup>th</sup> Street, Ste. 100  
Erie, PA 16502
- xxx. Health at Home Care, LLC  
225 Cornell Avenue  
Pittsburgh, PA 15229
- yyy. Rider Insurance  
581 Main Street  
Woodbridge, NJ 07095
- zzz. Gage Personnel Employment Services  
348 N. Reading Road  
Ephrata, PA 17522
- aaaa. SMS Builders  
201 Commerce Drive, #A  
New Holland, PA 17557
- bbbb. Reamstown Elementary School  
44 S. Reamstown Road  
Reamstown, PA 17567
- cccc. French Creek Golf Course  
4500 Conestoga Road  
Elverson, PA 19520
- dddd. Brecknock Elementary School  
1332 Alleghenyville Road  
Mohnton, PA 19540
- eeee. Express Employment Professionals  
840 North Park Road  
Wyomissing, PA 19610
- ffff. Dr. Michael Williams  
Thomas Jefferson University Hospital  
111 S. 11<sup>th</sup> Street, Ste. 524  
Philadelphia, PA 19107

- gggg. Dr. Brian Lockhart  
420 S. 5<sup>th</sup> Avenue  
Suite D1, 1<sup>st</sup> Floor  
Reading, PA 19611
- hhhh. American Select Insurance Company  
One Park Circle  
Westfield Center, OH 44251-5001
- iiii. Progressive Insurance  
6300 Wilson Mills Road  
Mayfield Village, OH 44143
- jjjj. Carolyn's Notary and Auto Tags  
58 Cooperfield Circle  
Lititz, PA 17543
- kkkk. Abel's Notary Service  
630 Lancaster Avenue  
Columbia, PA 17512
- llll. Vitu  
1500 Paxton Street, Suite 103  
Harrisburg, PA 17104
- mmmm. Integrated Medical Transport, LLC  
2999 Revere Street  
Harrisburg, PA 17111
- nnnn. Dr. Mark Wagner  
Murphy & Wagner DO  
623 N 5th Street  
Reading, PA 19601
- oooo. Dr. Barbara Hoffer  
1623 Morgantown Road  
Reading, PA 19607-9455
- pppp. Caernarvon Fire Department  
2145 Main Street  
Narvon, PA 17555
- qqqq. Berks County Orthopedics  
438 Walnut Street  
Reading, PA 19601

- rrrr. Kelly Services  
86 Commerce Drive  
Wyomissing, PA 19610
- ssss. Employment-A-Plus  
3 Burkhardt Lane  
Newmanstown, PA 17073
- tttt. Wendy's  
1075 S. State Street  
Ephrata, PA 17522
- uuuu. People Ready  
3276 N. 5<sup>th</sup> Street Highway  
Reading, PA 19605
- vvvv. Blue Ball Elementary School  
126 Ewell Road  
East Earl, PA 17519
- www. Aerotek Staffing Agency  
999 Berkshire Blvd., Ste 180  
Wyomissing, PA 19610
- xxxx. Morgan Truck Body, LLC  
111 Morgan Way  
Morgantown, PA 19543
- yyyy. Pennsylvania Department of Health  
Office of Medical Marijuana  
625 Forster Street  
Health & Welfare Building, Room 628  
Harrisburg, PA 17120
- Bureau of Program Integrity  
PO Box 8486  
Harrisburg, PA 17105  
Department of Human Services  
625 Forster Street  
Harrisburg, PA 17120
- zzzz. Papa John's  
705 W. Main Street  
Ephrata, PA 17522
- cccc. Dr. Andrew S. In  
3307 Lincoln Highway E  
Thorndale, PA 19372

dddd. St. Joseph Health Network @ Elverson  
45 S. Pine Street  
Elverson, PA 19520

eeee. Dr. Yooson E. Kim  
Family Dentistry Morgantown  
3411 Main Street  
Morgantown, PA 19543

ffff. Schaffer's Automotive, LLC  
4579 N. Twin Valley Rd.  
Elverson, PA 19520

ggggg. BB&T Corporation  
c/o Corporation Service Company  
2595 Interstate Drive, Ste 103  
Harrisburg, PA 17110

hhhhh. Eye Med Vision  
c/o National Regional Agents  
116 Pine Street, 3<sup>rd</sup> Floor, Suite 320  
Harrisburg, PA 17101

iiii. Integrated Medical Group  
82 Tunnel Road  
Pottsville, PA 17901-3869

33. Witnesses identified by Plaintiff

## **VI. EXHIBITS<sup>15</sup>**

Defendants may use any of the following exhibits in presentation of their case in chief:

1. Video Deposition, Exhibits, and Transcripts of Plaintiff Travis Sweigart
2. Video Deposition, Exhibits, and Transcripts of Officer Thomas Brecker
3. Video Deposition, Exhibits, and Transcripts of Kevin Bambrick
4. Deposition Transcript and Exhibits of Robert Lavery
5. Deposition Transcript and Exhibits of Jeffrey Reed
6. Deposition Transcript and Exhibits of Tyler Sakal
7. Deposition Transcript and Exhibits of Timothy Mast
8. Video Deposition, Exhibits, and Transcripts of Officer Kyle Tranovich
9. Video Deposition, Exhibits, and Transcripts of Sargent Matthew Menna
10. Video Deposition, Exhibits, and Transcripts of Christopher Smith
11. Video Deposition, Exhibits, and Transcripts of John Costa
12. Video Deposition, Exhibits, and Transcripts of Liam Tanelli

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<sup>15</sup> Defendants reserve the right to modify the same prior to trial, if necessary.

13. Video Deposition, Exhibits, and Transcripts of Kevin Patten
14. Video Deposition, Exhibits, and Transcripts of Justin Haskins
15. Video Deposition, Exhibits, and Transcripts of Zanna Patten
16. Video Deposition, Exhibits, and Transcripts of Casey Cairns
17. Video Deposition, Exhibits, and Transcripts of Andre Hamilton
18. Video Deposition, Exhibits, and Transcripts of Barry Readinger
19. Video Deposition, Exhibits, and Transcripts of Dr. Michael McCabe
20. Video Deposition, Exhibits, and Transcripts of Dr. Calum McRae
21. Video Deposition, Exhibits, and Transcripts of Dr. Timur Durrani
22. Video Deposition, Exhibits, and Transcripts of Jon Paul Dillard
23. Video Deposition, Exhibits, and Transcripts of Dr. Jeffrey Muttart
24. Video Deposition, Exhibits, and Transcripts of Dr. David Strayer
25. Video Deposition, Exhibits, and Transcripts of Joellen Gill
26. Video Deposition, Exhibits, and Transcripts of Randy Nelson
27. Video Deposition, Exhibits, and Transcripts of Todd Hoover
28. Video Deposition, Exhibits, and Transcripts of Stanley Andrews
29. All materials exchanged in discovery
30. All parties' requests and responses to Interrogatories and Requests to Produce
31. Plaintiff's Complaints and Defendants' respective Answers with Affirmative Defenses
32. Plaintiff's Initial Disclosures
33. Defendants' Initial Disclosures
34. Any and all photographs, scans, and/or videos in possession of any party depicting the area where the September 9, 2019 accident happened
35. Any and all photographs, scans, and/or videos in possession of any party depicting the motorcycle driven by Plaintiff at the time of the collision
36. Any and all photographs, scans, and/or videos in possession of any party depicting the tractor or trailer driven by Mr. Patten at the time of the collision
37. Any and all photographs and/or videos in possession of any party depicting Plaintiff and any injuries sustained by Plaintiff as a result of the September 9, 2019 accident
38. Any and all audio recordings, phone messages, or transcripts relating to the September 9, 2019 accident or Plaintiff's alleged injuries
39. Inspection protocol and forensic imaging data of Plaintiff's cell phone
40. Exemplar vehicles and/or parts from the 2002 Yamaha Fazer Motorcycle
41. Exemplar vehicles and/or parts from the 2006 Freightliner
42. Motive's Electronic Log Device
43. Stipulations of the Parties
44. Court Orders
45. Requests for Admissions and Responses
46. Demonstrative diagrams, photographs, powerpoint, and/or videos regarding the vehicles involved in the accident, accident, accident site, and events leading up to the accident
47. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Todd Hoover
48. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Dr. Jeffrey Muttart
49. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Dr. Tara Moore
50. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Kirk Cummings

51. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Dr. David Curry
52. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Dr. L. Matthew Schwartz
53. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Dr. Michael McCabe
54. Expert report(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Heidi Fawber
55. Declaration(s), Demonstrative Exhibits, Curriculum Vitae and Disclosures of Mark Lanterman
56. Expert report(s), Curriculum Vitae and Disclosures of Stanley Andrews
57. Expert report(s), Curriculum Vitae and Disclosures of Joellen Gill
58. Expert report(s), Curriculum Vitae and Disclosures of Randy Nelson
59. Expert report(s), Curriculum Vitae and Disclosures of Jon Paul Dillard
60. Expert report(s), Curriculum Vitae and Disclosures of Dr. David Strayer
61. Expert report(s), Curriculum Vitae and Disclosures of Valarie Parisi
62. Expert report(s), Curriculum Vitae and Disclosures of Dr. Calum McRae
63. Expert report(s), Curriculum Vitae and Disclosures of Dr. Guy Fried
64. Expert report(s), Curriculum Vitae and Disclosures of Dr. Ryan Michels
65. Expert report(s), Curriculum Vitae and Disclosures of Dr. Filip Moshkovsky
66. Expert report(s), Curriculum Vitae and Disclosures of Dr. Dale Berry
67. Expert report(s), Curriculum Vitae and Disclosures of Dr. Elliot Myrowitz
68. Expert report(s), Curriculum Vitae and Disclosures of Dr. Timur Durrani
69. Expert report(s), Curriculum Vitae and Disclosures of Ethan Geehr
70. Affidavit, Correspondences, and Curriculum Vitae of Joseph Purfield
71. All materials identified in Plaintiff's pre-trial memorandum or used by Plaintiff at trial<sup>16</sup>
72. Records, reports, and materials of:
  - a. Omni Insurance Company a/k/a Good2Go Insurance
  - b. Pennsylvania Department of Transportation
  - c. Dr. Jeffrey Mumie
  - d. UPMC Community Health Choices
  - e. Commonwealth of Pennsylvania, Department of Motor Vehicles
  - f. America's Best
  - g. Dr. Cain Cerra
  - h. NovaCare Rehabilitation
  - i. Romed Ambulance
  - j. Bollman Hat Company
  - k. State Farm Insurance Company
  - l. Caernarvon Township Police Department
  - m. Charles E. Barton
  - n. Dr. Krystle Chuong
  - o. Coventry Dentistry
  - p. The Performance Group
  - q. Dr. Donovan C. Young
  - r. Dr. David S. Goldberg

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<sup>16</sup> Defendants' incorporation of materials identified by Plaintiff does not waive their right to object to the admissibility of the same.

s. Garden Spot Middle School  
t. Cocalico High School  
u. Dr. Nathan Daigle  
v. Burmans Medical  
w. Tower Health Plastic Surgery  
x. Western Berks Ambulance Association  
y. Reading Nephrology  
z. Southern Berks EMS  
aa. Commonwealth of Pennsylvania Auto Tags  
bb. Pottstown Hospital  
cc. Aetna  
dd. Walmart Pharmacy  
ee. CoreSource  
ff. Doug's Family Pharmacy  
gg. Horizon Healthcare  
hh. Pennsylvania Department of Revenue  
ii. In Home Oxygen  
jj. Pottstown Wound Center  
kk. Star Marketing and Administration, Inc.  
ll. Tower Health  
mm. Medline Industries  
nn. GPS Physicians Group  
oo. Dr. Joseph W. Strangarity  
pp. Twin Valley Fire Department  
qq. Ability Prosthetics and Orthotics  
rr. Orthopaedics Associates of Reading  
ss. Tower Health at Home – Berks  
tt. Conduent  
uu. Brandywine Hospital Medical Transport  
vv. Heck Construction  
ww. GEICO Insurance Company  
xx. Encompass Health Rehabilitation Hospital  
yy. Elverson Honeybrook EMS  
zz. Berks Radiation Oncology Association  
aaa. Help at Home  
bbb. William Champagne  
ccc. Berks County Department of Emergency Services  
ddd. Social Security Administration  
eee. Beiler Brothers, LLC  
fff. Dr. Thiruvenkatas Dhurairaj  
ggg. Dr. Michael Sachenik  
hhh. ACME  
iii. Vaitl Service, Inc.  
jjj. Reono Bertagnolli, A Medical Group  
kkk. Berkshire Rehab Center  
lll. TracFone Wireless, Inc.  
mmm. Brooks Group Insurance Agency, LLC  
nnn. Endurance American Insurance Company

ooo. Hallmark Specialty Insurance Co  
 ppp. Dr. Jerry Szych  
 qq. Reliance Partners  
 rrr. Prime Property & Casualty Insurance  
 sss. Sompo International  
 ttt. Statewide Resources Insurance Agency, LLC  
 uuu. T-Mobile  
 vv. Motive formerly known as Keep Truckin'  
 www. Help at Home Services, LLC  
 xxx. Health at Home Care, LLC  
 yyy. Rider Insurance  
 zzz. Gage Personnel Employment Services  
 aaaa. SMS Builders  
 bbbb. Reamstown Elementary School  
 cccc. French Creek Golf Course  
 dddd. Brecknock Elementary School  
 eeee. Express Employment Professionals  
 ffff. Dr. Michael Williams  
 gggg. Dr. Brian Lockhart  
 hhhh. Dr. Thomas W. Dooley  
 iiii. Rider Insurance  
 jjjj. American Select Insurance Company  
 kkkk. Progressive Insurance  
 llll. Carolyn's Notary and Auto Tags  
 mmmm. Abel's Notary Service  
 nnnn. Vitu  
 oooo. Integrated Medical Transport, LLC  
 pppp. Dr. Mark Wagner  
 qq. Dr. Barbara Hoffer  
 rrrr. Caernarvon Fire Department  
 ssss. Berks County Orthopedics  
 tttt. Kelly Services  
 uuuu. Employment-A-Plus  
 vv. Wendy's  
 www. People Ready  
 xxxx. Blue Ball Elementary School  
 yyyy. Aerotek Staffing Agency  
 zzzz. Morgan Truck Body, LLC  
 aaaaa. Papa John's  
 bbbbbb. Wilmer Eye Institute  
 ccccc. Pennsylvania Department of Human Services  
 ddddd. Schaffer's Automotive, LLC

## VII. ESTIMATED LENGTH OF TRIAL

Defendants estimate that this trial will take approximately ten days.



## VIII. SPECIAL ISSUES

A. Defendants request reconsideration on the following issues and will be submitting bench Memorandums in support on the following:

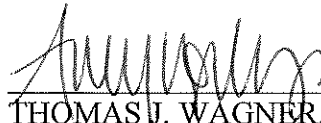
1. Preclusion of evidence relating to Plaintiff's failure to demonstrate proficient skill and knowledge for the safe operation of a motorcycle by obtaining the required motorcycle license;
2. Preclusion of evidence relating to the condition of the motorcycle, including the failure to obtain the required safety inspection;
3. Preclusion of evidence that marijuana metabolites were present in Plaintiff's system at the time of the accident when there is sufficient corroborating evidence of impairment (i.e. significant delay in response time, decision to apply the rear brake only causing reduced braking ability and maneuverability, toxicology results demonstrating presence of metabolites, and possession of drugs and paraphernalia) that should be presented to the fact finder for determination;
4. Preclusion of habit evidence relating to speed and skill; and
5. Preclusion of the motorcycle videos that depict Plaintiff's skill level and condition/handling of the motorcycle.

B. Defendants requested Plaintiff stipulate and agree to the authenticity, reliability and business records status of materials received pursuant to subpoena and exchanged during discovery.

Respectfully submitted,

**LAW OFFICES OF THOMAS J. WAGNER, LLC**

By:



THOMAS J. WAGNER, ESQUIRE

AMY L. WYNKOOP, ESQUIRE

Attorney ID Nos.: 52876/208440

8 Penn Center, 6<sup>th</sup> Floor

1628 John F. Kennedy Boulevard

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(T) 215-790-0761

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Attorneys for Defendants Voyager Trucking Corp.,  
Kevin Patten, Blue & Green Trucking & Hair, LLC,  
and Kevin Patten d/b/a Blue & Green Trucking &  
Hair, LLC